A

PANZANA ENTERPRISE SDN BHD

v.

NORIZAN BAKAR & ANOR

B

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
ABDUL WAHAB PATAIL JCA
LINTON ALBERT JCA
[CIVIL APPEAL NO: W-01-106-2009]

C

10 FEBRUARY 2012

ADMINISTRATIVE LAW: *Remedies - Judicial review - Dismissal from employment - Whether appropriate penalty - Whether Industrial Court and High Court erred in substituting own views for views of*

D

employer

LABOUR LAW: *Industrial Court - Decision - Dismissal for misconduct - Appropriate penalty - Whether decision of employer to be given effect to - Whether Industrial Court and High Court erred in substituting own views for views of employer*

E

The employee in this case, upon a domestic inquiry pertaining to four charges, including becoming a director in another company without the permission of the employer, was found guilty and dismissed from the employment. At the Industrial Court ('IC'), the

F

employee was found guilty only of charge 4. However, the court found it to be petty and not serious, and did not justify dismissal. The decision of the IC was subsequently affirmed by the High Court. Hence this appeal by the employer. The question advanced before the court was whether the IC and the High Court were

G

correct in their respective decision.

Held (allowing appeal; quashing the order of the High Court)

Per Low Hop Bing JCA, delivering the judgment of the

H

court:

(1) In an application for judicial review, the IC and the High Court are concerned with the application of procedural fairness in relation to the decision making process and not the

I

decision itself. In coming to the conclusion as to what the appropriate penalty for the employee ought to be the court

must not substitute its own views for the view of the employer concerned. In the instant case, the IC and the High Court had erred in substituting their own views for the views of the employer. (para 4)

Bahasa Malaysia *Translation Of Headnotes*

Pekerja di dalam kes ini, selepas siasatan dalaman berkaitan dengan empat pertuduhan, termasuk menjadi pengarah syarikat lain tanpa kebenaran majikan, didapati bersalah dan dibuang kerja. Di Mahkamah Perusahaan ('MP'), pekerja tersebut didapati bersalah terhadap hanya pertuduhan keempat. Walau bagaimanapun, mahkamah mendapatinya sebagai remeh dan tidak serius dan tidak mewajarkan pembuangan kerja. Keputusan MP tersebut kemudian disahkan oleh Mahkamah Tinggi. Maka rayuan ini oleh majikan. Persoalan yang diketengahkan di hadapan mahkamah adalah, sama ada MP dan Mahkamah Tinggi betul dalam keputusan masing-masing.

Diputuskan (membenarkan rayuan; membatalkan perintah Mahkamah Tinggi)
Oleh Low Hop Bing HMR, menyampaikan penghakiman mahkamah:

(1) Di dalam permohonan untuk semakan kehakiman, MP dan Mahkamah Tinggi perlu memberi perhatian kepada pemakaian keadilan prosedur berkaitan dengan proses membuat keputusan dan bukan keputusan tersebut. Di dalam mencapai keputusan tentang apakah hukuman yang wajar bagi pekerja, mahkamah tidak boleh menggantikan pendapatnya sendiri dengan pendapat majikan yang terlibat. Dalam kes ini, MP dan Mahkamah Tinggi terkhilaf dalam menggantikan pendapat mereka dengan pendapat majikan.

Case(s) referred to:
Tan Tek Seng @ Tan Chee Meng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 CA ***(refd)***

[Appeal from High Court, Kuala Lumpur; Judicial Review No: R5-(R1)-25-66-06]

Reported by S Barathi

A

JUDGMENT

Low Hop Bing JCA:

[1] Unanimous. The salient facts:

B (i) On 29 October 1999, the employer served a show-cause letter setting out four charges against the employee, including becoming a director in another company without the employer's permission.

C (ii) On 1 November 1999, the employee responded to the show-cause letter.

(iii) On 10 November 1999, the employer conducted a domestic inquiry and found the employee guilty of all the four charges.

D (iv) On 18 November 1999, the employee was dismissed.

(v) On 5 January 2006, the Industrial Court found the employee guilty of charge four only, but found it to be petty and not serious, and does not justify dismissal.

E

[2] The learned JC affirmed the Industrial Court's decision.

[3] The question before us is whether the Industrial Court and the High Court were correct in their respective decisions.

F **[4]** In an application for judicial review, the Industrial Court and indeed the High Court are concerned with the application of procedural fairness in relation to the decision-making process and not the decision itself: *Tan Tek Seng @ Tan Chee Meng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771 G CA. In considering the reasonableness of what a reasonable employer would have done, the court (whether Industrial Court, High Court or Court of Appeal) must not substitute its own views (as to what the appropriate penalty for the employee's conduct) for the view of the employer concerned. We hold that the H Industrial Court and the High Court had erred in substituting their own views (on the appropriate penalty) for the views of the employer.

I

[5] We therefore allow this appeal, quash the order of the High Court, and allow the employer's application for judicial review to issue the order of *certiorari*. The appellant-employer has agreed to waive costs.

[6] Deposit to be refunded to the appellant.